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Mr. W. O. Shultz
Associate General Counsel
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Open Records Decision No. 213

Re: Whether an internal audit of a division of a state university is required to be released under the Open Records Act.

Dear Mr. Shultz:

You have requested our decision as to whether an internal "audit" of a division of a state university is subject to disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

The Office of Internal Audits of the University of Texas at Austin recently conducted an "operational audit" of the Humanities Research Center at that institution. The audit is a "review and evaluation of the effectiveness and efficiency of operations and operating procedures" of the center. It is "separated into sections by functional areas," and each section is subdivided into summary, findings and recommendations. You contend that a large portion of the audit is excepted from disclosure by section 3(a)(11) of the Open Records Act, as

> inter-agency or intra-agency memorandums or letters which would not be available to a party other than one in litigation with the agency.

We have frequently said that section 3(a)(11)

> is designed to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief with regard to administrative action.

Attorney General Opinion H-436 (1974); Open Records Decision Nos. 149 (1976); 137 (1976); 128 (1976). It is equally clear that

> the protection afforded by section 3(a)(11) does not . . . extend to purely factual information, and those portions of an otherwise excepted document which

> contain factual material must be severed from the remainder and made available to the requestor.

Id. Often, however, it is difficult to determine whether a particular statement in a report constitutes "fact" or "opinion." In the report under consideration here, for example, the "findings" sections contain a wide range of information, from the purely objective to the highly subjective.

In Open Records Decision No. 160 (1977), we held that an audit report on a federal grantee was subject to disclosure because it was "solely factual and evaluative," and made "no recommendations or suggestions concerning the formulation of policy." That decision was based in part upon the court's opinion in Vaughn v. Rosen, 523 F.2d 1136 (D.C. Cir. 1975), which concerned a Civil Service Commission report evaluating personnel management in various federal agencies. The court, holding that the evaluations contained in the report were disclosable, even though they frequently reflected "opinion" rather than objective "fact," based its decision upon the purpose and probable use of the evaluations:

> . . . [as to] the evaluative portions of the sample reports . . . [there is] nothing in them to suggest that they are anything other than 'final objective analyses of agency performance under existing policy' . . . . They provide the raw data upon which decisions can be made; they are not themselves a part of the decisional process.

523 F.2d at 1145. To adopt the Government's view, that the "deliberative process" extends to the entire report, would, said the court,

> swallow up a substantial part of the administrative process, and virtually foreclose all public knowledge regarding the implementation of personnel policies in any given agency. . . . the only final action which would be subject to public disclosure would be the action taken by the surveyed agency in the implementation of the recommendations of the commission.

Id. The court did, however, except from disclosure the commission's recommendations "as the seed for deliberations by the subject agency itself, and thus protected." Id. (fn. 36).

In our opinion, the opinion audit at issue here is very similar to the report in Vaughn v. Rosen. It is frequently not possible to draw a reasonable distinction between "fact" and "opinion," since every fact is necessarily viewed through the medium of a human observer, and every opinion presumably reflects the speaker's view of the truth. Like the court in Vaughn, we believe a more appropriate and viable distinction is that between evaluation and recommendation, for it is the latter that is more directly related to the decisional process. Thus, it is our view that those subsections of the

operational audit labelled "recommendations" and other portions as marked, are excepted from disclosure by section 3(a)(11) of the Open Records Act. The remainder of the audit should be disclosed.

Very truly yours,

JOHN L. HILL
Attorney General of Texas

APPROVED:

DAVID M. KENDALL, First Assistant

C. ROBERT HEATH, Chairman
Opinion Committee

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